



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Jacob K. Javits Federal Building
26 Federal Plaza, 37th Floor
New York, New York 10278*

July 5, 2024

By ECF

The Honorable Sidney H. Stein
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

**Re: *United States v. Robert Menendez, et al.*,
S4 23 Cr. 490 (SHS)**

Dear Judge Stein:

The Government respectfully writes in the above-captioned matter to request that the Court's jury charge and verdict form reflect the allegation that defendant Fred Daibes was released on bail in a federal case at the time he committed the offenses charged in Counts One, Two, Six, Seven, Twelve, and Thirteen of the above-referenced Indictment. *See* 18 U.S.C. § 3147(1); *United States v. Confredo*, 528 F.3d 143, 155 (2d Cir. 2008) (where section 3147 is applicable, the rule set out in *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)—requiring that a fact increasing a defendant's penalty above the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt—"also applies[,] because section 3147 exposes [a defendant] to a higher maximum, *i.e.*, ten more years, than the highest maximum he could have received [on the charged counts of conviction].").¹

With respect to the jury charge, the Government requests that the jury be instructed as follows: "With respect to Counts One, Two, Six, Seven, Twelve, and Thirteen, if you find defendant Fred Daibes guilty of one or more of those counts, you must then determine for each of those counts on which you find Daibes guilty whether he was released on bail in a federal case at

¹ The parties have stipulated: "From on or about November 7, 2018, through at least on or about the date of the Indictment in this matter, FRED DAIBES, the defendant, was released on an appearance bond in *United States v. Daibes, et ano.*, Criminal No. 18-655-SDW, pending in the District of New Jersey". (GX 1465.)

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the time of the offense. For those counts, the verdict form has a separate line for you to answer this question.”

With respect to the verdict form, the Government attaches hereto a revised proposed verdict form, which includes the following for each of the aforementioned counts: “If, and only if, you have found defendant FRED DAIBES guilty of Count [NUMBER], indicate whether he was released on an appearance bond at the time of the offense: Released on Bond _____ Not Released on Bond _____”.

Respectfully submitted,

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Enclosure

cc: (by ECF)

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